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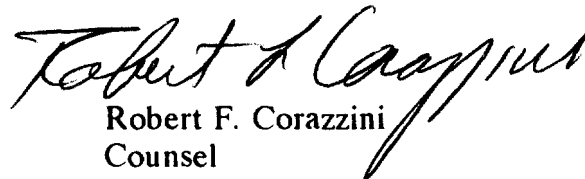
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments in Proposed Rulemaking
MM Docket No. 97-217
File No. RM-9060

Dear Ms. Salas:

Transmitted herewith on behalf of Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., and Humanities Instructional TV Educational Center, Inc., is an original and five (5) copies of their joint Comments in Proposed Rulemaking. Pursuant to the attached certificate of service, a copy of these Comments have also been hand delivered to the Chairman and each Commissioner. Should there be any questions concerning this material, please communicate directly with the undersigned.

Very truly yours,


Robert F. Corazzini
Counsel

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service)	
And Instructional Television Fixed)	File No. RM-9060
Service Licensees to Engage in Fixed)	
Two-Way Transmissions)	

COMMENTS IN PROPOSED RULEMAKING

Comes now Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., and Humanities Instructional TV Educational Center, Inc. (collectively, the "ITFS commenting parties"), by the undersigned counsel and present their Comments to the Federal Communications Commission in the above-captioned rulemaking proceeding.

On October 7, 1997, the Commission adopted a notice of proposed rulemaking in this docket. *Amendments of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*. FCC 97-360 (rel. October 10, 1997) (hereinafter *NPRM*). By Order adopted on December 5, 1997, the Commission extended the filing deadlines to a Comment Date of January 8, 1998 and Reply Comment Date of February 9, 1998. The ITFS commenting parties present the following comments in this proposed rulemaking.

1. The ITFS commenting parties are constrained to urge that the FCC in adopting specific rules dealing with ITFS licensee and operator rights and obligations in the world of two-way and digital transmissions, maintain in all respects its oft-stated goal of providing the greatest flexibility to all parties including specifically the ITFS licensees and operators in the development and implementation of the new technologies. The theme of flexibility resounds throughout the Notice of Proposed Rulemaking. In introducing its proposal, the Commission indicated that one of its tools in expanding the opportunities for two-way service was the creation of greater flexibility for spectrum users, and its desire to facilitate a flexible use of that spectrum.^{1/} Unless the Commission affords the ITFS licensees the needed flexibility to fully exploit digital technology and in delivering two-way communications services, neither the instructional nor commercial benefits of the new technologies will be fully recognized. The ITFS commenting parties recognize that the Commission approached this rulemaking with the intent of establishing the most flexible framework possible, and urge the Commission to stay that course.

2. The ITFS licensees and the wireless cable industry will prosper to the maximum extent through a cooperative union. However, over-regulation of the relationship between the two will only straight jacket both resulting in less, rather than more, educational and commercial benefit to the public each strives to serve. Thus, maintaining arbitrarily determined ratios between the ITFS and the commercial usage is bound to have the same stifling effect that the original MDS rules requiring common

^{1/} Notice of Proposed Rulemaking, supra at ¶13.

carrier service and imposing arbitrary market licensing restrictions had upon the wireless cable industry in its early years. Achieving the primary educational purpose of ITFS is the responsibility not of the FCC or the wireless cable industry, but of the educational entities themselves. Each institution knows best its own requirements and the requirements of the local citizenry which it serves. In some ways there appears to be an underlying assumption that the ITFS entities cannot themselves attain and deliver the degree of service to which the public is entitled. This sells the ITFS licensees considerably short.

3. Distance learning education will require an expansion of multimedia architecture to serve the future needs of the educational community. Two-way, digitization and cellularized transmission of video and data will provide new platforms enabling us to meet those needs. Traditional ITFS and wireless services will require flexible tools to develop and compete in the next millennium. The ITFS commenting parties believe in their ability to fashion excess airtime agreements with wireless cable operators which guard against abuse, provide significant benefits to the ITFS interests and strike a fair balance with the wireless cable operators. No one is in a better position to meet local educational needs than the local educator. ITFS interests and wireless cable operators already have many years of experience in dealing with each other and by and large, the experience has been profitable and beneficial to both parties. The ITFS commenting parties firmly believe that we are able to negotiate our own contracts in our own best interest and for our own needs. Unnecessary regulation stifles incentive and tends to leave the "protected" parties in a weaker position in the long term.

4. The ITFS license holders and the wireless cable operators must work in unison to achieve the maximum benefits for both. Unilateral efforts and over-regulatory governmental controls will serve the interests of neither. We must not lose sight of the fact that what is necessary is an acceptable compromise between the interests of the distance education providers and the wireless system operators so that both may flourish. In fact, the ITFS commenting parties understand that certain National Associations representing the ITFS licensees and wireless cable operators respectively, have themselves reached agreement on basic principles which will serve to support this rulemaking effort and will jointly so advise the Commission. We, the ITFS commenting parties, wholeheartedly support this common goal approach and endorse the cooperative effort used in reaching a mutual position advanced to the FCC. We look forward to reviewing their filing.

5. Traditional distance education telecourses serve a myriad of local needs which can best be served and in fact can truly only be completely understood by the local educational bodies. Rules designed to apply across the board aimed at achieving a general benefit oftentimes have an opposite effect of restricting and indeed precluding the resolution of locality-specific needs. Excess capacity contractual provisions that provide distance education benefits for a large university system in a major market may be counterproductive for a parochial school system in rural Montana seeking to utilize the new technologies. Once again, the maximum benefit to the largest number of participants can only be attained by affording the parties the maximum flexibility possible. This also means the least restrictive regulations whether applying to recapture

requirements or programming requirements. It is extremely important for the FCC to note that it is now dealing with a more mature and developed ITFS and distance education infrastructure than existed in 1983. Many ITFS licensees and operators including members of the ITFS commenting parties have been associated with local wireless systems for as many as 10 years. The experience gained in this cooperative venture positions the ITFS licensees to be extremely able to contractually participate with the wireless cable systems in the further development of ITFS technology to better serve and meet our distance education requirements.

6. For the foregoing reasons, the ITFS commenting parties support the proposal based upon the least regulation and most flexibility needed to attain the desired results. Thus, the ITFS commenting parties support retaining the twenty hour per week per licensed ITFS channel minimum program requirements of the current FCC regulations. Greater minimums would burden small ITFS entities by indirectly imposing financial and administrative burdens before these ITFS licensees are in a posture to assume these responsibilities. As yet another measure to ensure that unnecessary burdens are not placed upon ITFS entities as the new technologies develop, flexible provisions for channel swapping and channel loading in both the analog and digital modes should be permissible. The ITFS commenting parties also support maintaining the existing twenty hours of ready recapture with additional recapture rights of digital airtime to allow for a total of four (4) program tracks per four (4) channel ITFS group. This is appropriate as a minimum requirement and of course the ITFS licensee may always retain more. The regulatory structure must give the wireless industry the incentive to fully develop digital

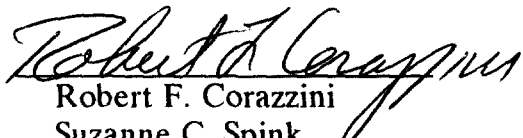
technology. Requiring retained capacity that the ITFS licensee does not need and perhaps cannot afford, would only serve to minimize that incentive. For this reason, we believe that maximum permissible lease terms should be extended to fifteen (15) years or more conditioned upon license renewal. Again, however, to avoid unnecessary burdens especially on the ITFS parties, existing contracts should be grandfathered. It would be impractical to require parties to incorporate new rules and new provisions into existing contracts without appropriate negotiations between the parties involved. It should also be the sole discretion of the ITFS licensee to defer any portion of additional digital recapture airtime for a maximum period of five years. Discretionary deferral will serve to encourage long-term system planning.

7. As a significant vehicle for the achievement of the goals sought by the Commission and the parties alike, the Commission's processing procedures must also be addressed. It is imperative that an expedited processing procedure be implemented. The existing window filing procedure has resulted in years of delay in making distance learning education available in many areas. Although certainly not perfect, we support the automatic grant processing of applications conditioned upon strict regulatory oversight assuring that those that employ the advanced technology are required to protect incumbents against any impermissible harmful electrical interference resulting therefrom. Finally, in keeping with the theme of flexibility, Internet and Intranet return path use and other non-video alternative uses of the channels should qualify in meeting ITFS program requirements. Once again the ITFS use should be established by the local educator based upon their own needs and their own reasonable discretion.

8. In summary, the ITFS commenting parties believe that only through the most flexible framework possible utilizing the least regulatory scheme necessary will both the distance education providers and the wireless cable system operators realize the maximum benefits of the era of new technology in which both must fully participate in order to recognize their distinct, yet obviously compatible, goals. ITFS and the operator should be free to structure a lease that meets their respective needs as solely determined by the parties. The rules already provide ITFS licensee protection and the educational integrity of the ITFS channels. Further regulation would restrict the parties from structuring agreements that meet their respective needs. Complicated new regulatory schemes or intrusive FCC oversight will, in the long run, overly burden all parties.

Respectfully submitted,

Region IV Educational Service Center
UT Television
George Mason University Instructional
Foundation, Inc.
Humanities Instructional TV
Educational Center, Inc.

By 
Robert F. Corazzini
Suzanne C. Spink
Counsel

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(202) 296-0600
January 8, 1998

CERTIFICATE OF SERVICE

I, Robert F. Corazzini, on behalf of Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., and Humanities Instructional TV Educational Center, Inc., certify that a copy of the foregoing Comments in Proposed Rulemaking were delivered by hand to the following on January 8, 1998:

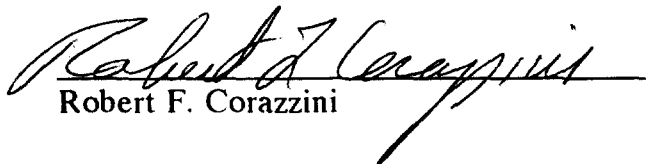
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